

17 May 2017

**Social Security Advisory Committee
Minutes of the meeting held in room 5.21/5.22
Caxton House, Tothill Street, London, SW1H 9NA**

Members: Paul Gray (Chair)
Bruce Calderwood
Carl Emmerson
Colin Godbold
Chris Goulden
Jim McCormick
Gráinne McKeever
Dominic Morris
Seyi Obakin
Judith Paterson
Charlotte Pickles
Liz Sayce

Apologies: Rachael Badger
Victoria Todd

Guests and Officials: See Annex A

1. & 2.

[RESERVED ITEMS]

3. The Jobseeker's Allowance (Hardship) (Amendment) Regulations 2017

3.1 The Chair welcomed Phil Martin (SCS, Head of Labour Market Interventions Strategy), Carmen Pardavila and Ian Ward (G7 and HEO respectively in Sanctions Policy) and Tammy Holmes (G6, Head of Analysis for UC, Labour Market and Partnerships Division) to the meeting. The draft regulations were being presented because Ministers had wanted to ensure that any homeless or mentally impaired claimant subject to a benefit sanction could receive a Jobseeker's Allowance (JSA) at the hardship rate without having to wait for 14 days to elapse. The measure was therefore a beneficial one. The Department had estimated that the amendment would result in around 8.9k additional hardship payments at a cost of £0.78m. It was possible to see this as a discrete change with finite costs because it would cease to have any impact beyond 2021 when income-related JSA was due to have been fully replaced by Universal Credit (UC). It was noted that, unlike JSA, no equivalent 14 day rule existed in UC and the Employment and Support Allowance (ESA).

3.2 The Department's intention was to introduce the amended legislation so that it came into force on 21 July 2017, although that was subject to review. The nature of

the change was such that the Department had deemed that a public consultation exercise was inappropriate.

3.3 The following main questions were raised in discussion by Committee Members:

- (a) **Given that UC and ESA did not have a 14 day rule, would it not be simpler and more consistent to have a rule which said that hardship payments were available from the outset? What was the justification for continuing with a 14 day rule in JSA?**

Ministers had focused on these two particular groups – the homeless and those with a mental impairment in this instance, but that did not rule out future changes on the lines indicated, or a further extension of the groups in JSA where the 14 day rule no longer applied. Beyond that however the Department were unable to comment at this time.

- (b) **Although the change was a welcome one, would the Department be doing anything to help vulnerable people access hardship payments in the first place?**

Before any benefit sanction was imposed the work coach would ensure that the claimant was fully acquainted with what was required of them and the consequences of any failure to comply. In addition to being warned about the implications of sanctions, they would be told about hardship payments and how they could be accessed throughout their customer journey

- (c) **The issue was more about claimants with mental health issues. In such cases it was common to find that claimants would not present themselves as having a mental impairment and, because of that, were unable to access hardship payments. In such cases ‘business as usual’ was not sufficient. Could the Department arrange to put a flag or marker on the case so that, for example, they received a visit before any sanction was imposed?**

The Department could only rely upon information provided by the claimant. The onus was on them to tell the Department that they had a problem. Once the Department had the information, it would be able to do something about it.

- (d) **In that case, the issue might be around the adequacy of the opportunities claimants and others were given to represent any mental health issues. Turning to the definition of ‘homelessness’, by relying upon the use of the term as it appears in the Housing Act 1996 and in equivalent Welsh and Scottish legislation, was the Department adopting a definition where the emphasis was largely on a legal right to occupy accommodation and, as such, perhaps taking an unnecessarily restrictive interpretation? Would a broader approach which interpreted homelessness in the way in which that word is commonly understood in everyday usage not be preferable? The Jobseeker’s Allowance Regulations 2007 refers, for example, to a person becoming homeless without defining what homelessness means.**

The Department would check that point with lawyers and come back to the Committee.¹

- (e) **In paragraph 24 of the Explanatory Memorandum it was stated that ‘benefit legislation is not a devolved matter.’ Although it was true that JSA was not devolved, employment programmes were, and therefore this statement should be adjusted accordingly. That meant that there were implications for the devolved administrations in the introduction of the Work and Health Programme. Had DWP contacted the relevant devolution teams about the proposals?**

Yes – the Department had informed officials in the devolved administrations and the point being made was acknowledged.

- (f) **Did that include Northern Ireland?**

Yes – policy colleagues in the Department for Communities in Northern Ireland had been informed, and they had fed the information through to their operational counterparts. No issues had arisen.

- (g) **The change meant that the legislation would refer to ‘mental impairment’ as well as physical impairment although it was also stated in the Explanatory Memorandum that there was no intention to define mental impairment. However in the supporting documentation the Department had used the terms ‘mental impairment’ and mental health condition’ interchangeably. There was therefore some potential for confusion. As generally understood, ‘mental impairment’ would include mental health conditions such as anxiety and depression but would extend, for example, to cover a learning disability. It was important that the Department understood this distinction and was careful about how it used the term ‘mental impairment’.**

The point was accepted. Guidance would make clear that mental impairment should be interpreted broadly.

- (h) **Examples of mental impairment would be helpful in the guidance.**

Noted.

- (i) **In regulation 140(1)(g) of the Jobseeker’s Allowance Regulations 2006 the decision-maker would appear to be required to make a judgment on whether, unless JSA was paid, there would be a deterioration in the claimant’s condition over the course of the next fortnight when compared with a normally healthy adult. It might be difficult to see how**

¹ The Department has since responded that: *We have queried the definition of ‘homelessness’ and are satisfied that this is broad enough to capture the examples raised by your members during the meeting, such as people “sofa surfing” or living with relatives. Thus, we do not think that it is necessary to go further than the current definition but, nevertheless, we will ensure that suitable examples are provided in the operational guidance so it captures your concerns.*

a learning disability could be affected in that way. In practice did decision-makers seek to gather evidence on what might happen over the coming fortnight in order to take a view on this, or did it tend to get waved through without any investigation?

The specific provision referred to a deterioration in the health of the person concerned, rather than to the specific physical or mental impairment in question. However the Department would acknowledge that in practice any decision made in accordance with regulation 140(1)(g) would probably be made without too much close regard to the provision about a deterioration in health.

(j) In that case why not omit this particular clause from the provision at the same time as it was being amended?

The Department undertook to consider that further and come back to the Committee.²

3.4 The Chair thanked the officials for coming along and responding to the Committee's questions. He advised them that the Committee was content that the draft regulations could proceed to being made and laid in Parliament without being taken on formal reference.

4. The Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) (Amendment) Regulations 2017

4.1 The Chair welcomed to the meeting the following DWP officials: Phil Martin (SCS, Head of Labour Market Interventions Strategy), Deborah Nuttall (G7, Labour Market), Andrew Stott (SEO, Work and Health Programme Legislative Change & Localism Team), Ed Hawker (G6, Disability Employment and Support Directorate), Narinder Clarke (SEO, Labour Market) and Andy Lee (HEO, Change, Policy and Planning Division).

4.2 The draft regulations provide a vehicle for the introduction of a new programme named "the Work and Health Programme". Because the wording in the primary powers in the Jobseekers Act 2008, as interpreted by the courts, required the Secretary of State to provide a brief description of any programme in which a claimant may be required to participate, this new programme required an amendment to the existing Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013. Although the majority of those for whom the Work and Health Programme was designed will be voluntary participants, a regulatory amendment was needed to enable the Department to mandate long-term unemployed claimants to attend. These claimants would form the remainder of programme participants. This amendment would only be required to cater for long-term unemployed claimants in receipt of Jobseeker's Allowance; no change was required in respect of Universal Credit claimants. As well as making provision for the

² The Department wrote to the Committee following the meeting noting that '*we held sessions with key stakeholders in a number of areas, legal, communications and operations to explore your request and, as a result, we observed that, contrary to our original information, this judgement is regularly applied by the Hardship officers*'. Read the [exchange of correspondence between DWP and SSAC](#).

Work and Health Programme, the draft legislation would also delete references to three other programmes which had become redundant.

4.3 The Chair opened the discussion by acknowledging that the Committee, after a careful consideration of the documentation presented, was content with the draft regulations. He therefore proposed that the questioning should focus more on the Work and Health Programme itself. The following questions were raised by Committee members in discussion:

- (a) **The Equality Analysis advises that the Department would select participants for the programme on the basis of their eligibility and suitability. Who would determine suitability and what criteria would be used?**

There was no single aspect about a particular claimant which would determine whether or not they would be suitable for the programme. It was more a case of weighing up a number of factors, such as who would have a more realistic chance of securing work as a result of participation. Work coaches were key to identifying those most likely to benefit from undertaking the programme, and the Department would be relying upon their discretion to an extent. They would however be supported by an identification tool and a person appointed to fulfil a gatekeeper function of considering those put forward by different work coaches and making a final selection. This would ensure that there was a measure of consistency in who subsequently went forward to participate in the programme.

- (b) **How would the Department avoid providers cherry-picking the intake?**

Providers would have no say in who was allocated to the programme. Selection was solely for the Department to carry out.

- (c) **Past experience suggested that when a programme looked for volunteers, there tended to be few takers, and there was never a problem in accommodating them on the programme in question. In this case the Equality Analysis asserted that demand was likely to outstrip supply. How would the programme be managed if there was an over-subscription of volunteers?**

Just volunteering alone was not enough; the Department would seek to identify those claimants most likely to benefit from the programme. There were some claimants who would be content to participate on a programme, but with no serious intention of finding work when it had ended. The Department needed to match places with candidates best placed to benefit from the support offered by the programme.

- (d) **Ultimately somebody within the Department had to make a decision regarding voluntary participants who may be similarly eligible and suitable to participate – one person would be accepted on to the programme; another would be rejected.**

This was true – the programme had to draw a line somewhere. However the Department was seeking to introduce a process which aimed to judge who would most benefit from the programme.

- (e) For the long-term unemployed who would be mandated to participate in the programme, the Equality Analysis advised that, because there would again be more claimants than places, there would again have to be a selection process. However it would be on a different basis to that for selecting voluntary participants. In the case of claimants eligible for the mandatory journey, selection would be entirely random. The rationale provided for that approach was that it reduced the risk of legal challenge. Could the Department explain why a random selection would reduce the legal risk?**

Because, in the interests of fairness, there had to be a way of ensuring all eligible potential participants in the long-term unemployed group had an equal chance of participation, particularly because non-participation without good cause on the programme by a claimant mandated to attend could result in a benefit sanction. Having a discretionary selection process for voluntary participants did not carry the same level of risk that doing so for mandatory participants would have, because voluntary participants could not be mandated to participate or be subject to a sanction for non-compliance. Given that a selection process of some form was necessary to manage places for the long-term unemployed who are the smaller proportion of the cohort, it was important that the Department maximised equitable allocation of places and minimised the risk of legal challenge. It had done this by making sure there was no element of subjective judgment in allocating places for the long-term unemployed group.

- (f) How large an area would the gatekeeper role cover?**

They would be regionally based. Although the Department would be working to ensure consistency across the country, there might prove to be minor variations in approach to selection. Some variations were to be expected when there was not an identical demographic in each area.

- (g) How would funding be allocated?**

It would be proportional, based on numbers.

- (h) The evidence was that people were best linked to jobs and programmes when there was a good relationship with an advisor whose exercise of discretion was backed by strong local knowledge.**

Guidance for work coaches and for the gatekeeper would be provided. The process of random selection for mandated claimants would come after the work coach and the gatekeeper had performed their respective tasks. On the use of individual discretion for voluntary participants, the Department was aiming to move work coaches towards more consistent judgments overall and away from the use of local discretion within the framework of guidance provided. The gatekeeper role would also assist with monitoring consistency.

(i) How would eligibility on the grounds of disability be assessed?

This would not call for a judgment about the scale of the disability; nor did it relate to any prognosis. The definition of disability in the Equality Act 2010 was a broad one and the guidance would need to reflect that more generic approach. The Department would provide more detail on the definition to be used.³

(j) The amendment meant that anyone who was long-term unemployed, regardless of whether or not they were disabled could, in theory, be mandated to participate in the Work and Health Programme. The Department's assertion that anyone with a disability or in the early access disadvantaged group would not be mandated rested on a statement of intention, rather than the legislation. Would it not be preferable to have the issue secured in the legislation?

The regulations provide that the programme “is a scheme designed to assist a claimant who is long-term unemployed”. Whilst there was no definition in the draft legislation as to what constituted ‘long-term’, the Department’s intention of only mandating those unemployed for 24 months or more was set out in guidance documents for both work coaches and providers. It would be clear to work coaches who could and who could not be mandated to the programme. Someone who had been unemployed for less than 24 months would fail the initial eligibility test and would be unable to access the programme. This same approach had been used in determining access to the Work Programme and had not caused any confusion or difficulties.

(k) For someone who voluntarily entered the programme as a disabled person, but then ceased participating, who would determine whether their participation in the programme would continue or not? Could they then be mandated?

If a disabled person began to participate voluntarily in the programme but then disengaged from it, they could be mandated back on to it at the point at which they reached 24 months of unemployment, provided they met the other eligibility criteria for the long-term unemployed. Their journey would then switch to a mandatory journey rather than a voluntary one. If a disabled claimant opted to cease their voluntary participation in the programme, the programme design was that the programme provider would notify the Department. The claimant would then be invited to a meeting with their work coach, in line with normal practice for the benefit type they had been awarded. There they would be encouraged to discuss their individual circumstances and needs and explore, with the work coach, other options for support – including that being offered by the Work and Health Programme. If, as a result of the meeting, the person concluded they no longer wanted to participate in the programme then that would be accepted. The work coach

³ The Department subsequently advised that an individual would confirm that they were disabled in accordance with the Equality Act 2010. This was the same approach as with the eligibility requirements for Work Choice and Specialist Employability Support – the Department’s current contracted employment programmes for disabled people. Neither the disability itself, nor its severity, would be a determining factor in referral to the programme. Rather the issue was whether the individual would benefit from the support offered by the programme.

would then consider what other support the person could be offered instead. The guidance would set this out in detail.

4.4 The Chair thanked the officials for attending and addressing the questions raised by the Committee. He advised them that the Committee was content that the proposals could proceed without having been taken on formal reference.

5. Private Session

[RESERVED ITEM]

6. Current issues/AOB

Date of next meeting

6.1 The next meeting was scheduled to take place on 21 June.

Attendees

Guests and Officials

Item 4: Phil Martin (SCS, Head of Labour Market Interventions Strategy)
Tammy Holmes (G6, Head of Analysis for UC, Labour Market and Partnerships Division)
Carmen Pardavila (G7, Sanctions Policy)
Ian Ward (HEO, Sanctions Policy)

Item 5: Phil Martin (SCS, Head of Labour Market Interventions Strategy)
Ed Hawker (G6, Disability Employment and Support Directorate),
Deborah Nuttall (G7, Labour Market)
Andrew Stott (SEO, Work and Health Programme Legislative Change & Localism Team)
Narinder Clarke (SEO, Labour Market)
Andy Lee (HEO, Change, Policy and Planning Division).

Secretariat: Denise Whitehead (Committee Secretary)
Paul Mackrell (Assistant Secretary)
Will Farbrother (Researcher)
Ateeqa Khan (Secretariat)